

Acquired Brain Disorder Waiver
Public Comment and BDS Response
July 2021

The State provided public notice of opportunity for public comment for the Acquired Brain Disorder Waiver Renewal in accordance with 42 CFR §447.205 for the public comment period of 6/1/21-6/30/21. Access to the full waiver was made available both electronically, via the Bureau of Developmental Services (BDS) website, and hard copy. A Public Notice of four Public Comment forums and Notice of Opportunity for Public Comment was distributed via newspaper and email. All forums were held via Zoom due to Covid-19.

The first forum was held on 6/10/21 with 2 participants (6 DHHS + 3 IOD + 2 Stakeholders), the second on 6/12/21 with 6 participants (3 DHHS + 2 IOD + 1 Stakeholder), the third on 6/17/21 with 0 participants and the fourth on 6/22/21 with 17 participants (6 DHHS + 2 IOD + 9 Stakeholders). Feedback was received and captured during the forums.

Additionally, BDS received feedback from one stakeholder via email. There was no feedback received via post mail. A summary of the comments by theme is outlined below, including responses from the Bureau of Developmental Services.

Assistive Technology

Comment: Thinking of the people who are seeking self-employment as a way to start earning a living in their new situation, are they allowed to use the waiver to get supplies to start their self-employment business? (i.e. laptop, printer, dragon speak software to speak to write documents rather than type, jewelry making supplies, or craft supplies to sell things on Etsy)

BDS Response: Adaptive equipment needs to be driven by an assessed need based upon the person's disability. Dragon Speak software may be covered if it is needed based on an assessed need related to the person's disability. A printer, however, would not be covered as it is a business related cost.

Comment: We support the training of service animals to be covered under assistive technology as written.

BDS Response: Thank you for your feedback.

Community Integration Services

Comment: In relation to water safety, can the caregiver/parent take water safety training and rescue training? For example, a mother caring for a child with an Acquired Brain Injury or is it just the brain injured person themselves who can take water safety lessons.

BDS Response: If the parent is also the paid-provider, then it would be covered if the training was determined to be necessary for the individual's needs.

Comment: Would this cover transportation to a clubhouse model for people with brain injury especially?

BDS Response: Yes.

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Comment: The clubhouse model provides much more than peer support like training or how to take care of yourself, how to make meals, how to take care of your bank account, etc.

BDS Response: Thank you for your feedback.

Comment: We support the development / transition of adaptive recreation to Community Integration Services and support that the \$8000 cap with a justification on file for a single request (other than camp) be required.

BDS Response: Thank you for your feedback

Community Support Services

Comment: We support the changes to Community Support Services allowing up to 30 hours per week and for 24 months. We also support the guidance that BDS can approve beyond these limits on a case-by-case review.

BDS Response: Thank you for your feedback

Crisis Response

Comment: Under Crisis Response Services we recommend the waiver indicate that additional approval past six months can be granted on a case-by-case basis.

BDS Response: Thank you for this recommendation. The following change has been added to the limits section of this service definition: "Six month approvals may be renewed based on individual need."

Community Participation Services

Comment: Would this cover a membership to the Krempels Center?

BDS Response: Membership to the Kremples Center must meet the Service Definition and Provider Qualifications for this Service. Community Integration Services and/or Individual Goods and Services could be options as well, depending on the services being provided. We cannot offer something on the waiver that is also on the State Plan.

Comment: They do want Clubhouses that are not on the seacoast, like up north or on the west of New Hampshire. I am glad to hear it is a possibility to have access to funds, but if a person is close to needing nursing home or institutional level of care may not be the best choice for them.

BDS Response: Thank you for your feedback

Comment: What is the difference between a legal guardian and a legally appointed representative?

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BDS Response: A legal guardian is the parent of a minor child, or a guardian appointed by the Probate Court for an adult. As defined in State Administrative Rule He-M 522.02 (ae), a representative includes a legal guardian, or a person who has power of attorney for the individual.

Environmental and Vehicle Modification Services

Comment: Can the fencing cover things that would be outside of personal property lines? Could they fence a danger outside of their own property lines?

BDS Response: The physical adaptation shall be to the private residence of the participant.

Comment: What if they have a lake house and a residential house? Would you allow them to put fencing on both properties?

BDS Response: We would have to explore this on a case-to-case basis. We have seen many requests come in with different properties or individuals who have multiple sets of parents. We would need supporting documents to get there.

Individual Goods and Services

Comment: I am assuming when the budget template goes out, that the narrative going with the budget will need to spell out what this will be?

BDS Response: It will provide the definition of the service and any limits. We must demonstrate the good or service will meet the criteria for the individual.

Non-Medical Transportation

Comment: If you have a Family Managed Employee with PDMS that is working with an individual with how to utilize a bus system and there is a monthly bus pass, are we able to purchase the bus pass for the individual and staff for training purposes?

BDS Response: This is contingent on what services the staff person is providing the individual. If the DSP is providing a day program service, then transportation is included in that day program rate.

Comment: If one of the duties is to teach the individual to ride the bus independently, and in order to do the training piece you must use the bus on a regular basis to get him accustomed to the process, which is why we are wondering if a pass can be purchased for the individual and the staff.

BDS Response: The question is if it is a day program (community participations services) or a non-medical transportation. We would need to look at the service agreement to see what we are landing on. Could we keep the staff transportation reimbursement rate under the day program for staff and add non-medical transportation to cover a voucher for the individual? The service array is available through PDMS and so all services include transportation in the rate so we must determine what the staff is providing for a service.

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Comment: The example I have is that during COVID, we had to help families who did not have technology or access to technology to get transportation to our organization for an SIS or an NCI interview. We paid for taxis to come or where there were not staff supports, would something like this qualify for this service. If we access this for an individual and a family guardian, would we have to redo the budget to add this service in?

BDS Response: The rate for the SIS includes transportation. Non-medical may cover this depending on the individual circumstances.

Comment: If there is a non-medical transport new service, we would need to revise the budget and add it in and possibly revise the ISA to add it into both places.

BDS: An assessment of what the service agreement looks like and how to break it out into the new service definitions will need to be done, as we have unbundled many things (i.e. PDMS). It will be more work on the PA side. In the scenarios there are foundational rules to follow: we cannot cover something on the waiver that is otherwise covered under state plan, if it is covered under an existing waiver service then we cannot cover it under non-medical transportation.

Comment: Occasionally we have individuals who need to access a moving truck, would this be covered under Non-Medical Transportation?

BDS Response: This would depend on how the individual is using the moving truck. It must meet the criteria set forth in the non-medical transportation definition.

Comment: There has been conversation with medical transportation between other states, does this fall into some of the language in non-medical transportation also?

BDS Response: If it is med-transport, it is by definition, medical transportation meaning we access the MCO for this. In some cases. If it is denied through the MCO, then we may cover it but we must work through all options to ensure we have found the best option to meet a need.

Personal Emergency Response Services

Comment: Is 24/7 monitoring required or can this be during when they are alone?

BDS Response: An individual can wear a device when they are alone, as determined by the planning team. A device does not need to be monitored by another person 24/7 in order to be covered under this service.

Comment: Is a lifeline required to be worn 24/7 or only when they are alone?

BDS Response: This up to the planning team to decide.

Comment: Is the \$2,000 annual or a lifetime limit?

BDS Response: It is an annual limit. We are trying to meet needs while managing to limits.

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Comment: Is there a discussion about processes for securing funding or is this to be put onto a new budget template?

BDS Response: There will be a budget template built out including new service array as well as limits.

Comment: We support the implementation of PERS Services.

BDS Response: Thank you for your feedback

Respite

Comment: We recommend the practice of Area Agency Arranged Respite be discontinued. To remain conflict free, Area Agencies can't provide services and case management. When we arrange the respite, we are providing the service. It is still recommended that we support families to develop networks of respite workers, but we would not arrange it. The family would remain the lead which would maintain firewalls for conflict free case management.

BDS Response: This comment is referencing how to implement services in the waiver. This recommendation can be considered as part of the Conflict of Interest Corrective Action Plan implementation. If this recommendation moves forward, this would require a rule change.

Comment: Respite care being flexible and allowing these services without requiring a back-ground check. This permits families to use respite for unplanned increasing flexibility. We also support the increased caps and the removal of training under the cap of 20% respite.

BDS Response: Thank you for your feedback

Service Coordination

Comment: We recommend dual case management be available for those currently serviced on another HCBC waiver (CFI) while they are transitioning to the ABD waiver. Often individuals want to move from CFI to ABD waiver services. Case management from the ABD side spend a lot of time developing these programs which is not something the CFI case manager can do. We would recommend that we are able to bill case management for our program transition development support. We have processes in place for dual case management in other systems that work quite well that could be implemented. Currently we are not paid for any of this work which can be intensive and take time to develop.

BDS Response: Accessing state plan services (i.e. Case Management on CFI Waiver) and Waiver services is not allowed. That being said, there should be discussion on how a seamless transition can be facilitated by Case Management / Service Coordination for any individual moving from one Waiver to another.

Supported Employment

Comment: It is our recommendation that Supported Employment Funds be available to cover job development funds without the participant present. Vetting employers for an individual takes a considerable amount of time. Currently we can't bill unless the participant is with the developer and for

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many participants it is best, they do not get involved until the opportunity is further along in development. Vocational Rehabilitation funds this support at times, and we support a justification of why VR funding would not be adequate prior to approval.

BDS Response: Supported Employment is defined in State Administrative Rule He-M 518. He-M 518 does not require that the individual has to be present. For example, a provider could be helping an individual with a goal to work in a bakery. The provider could research bakeries in the area to find one that could be a fit for the individual. The provider would clearly document activities that are in alignment with the individual's service agreement, and this activity would be covered by the Waiver.

Comment: We recommend that SEP services be able to be provided by a legal guardian or legally responsible person.

BDS Response: Thank you for your feedback. This is not up for reconsideration at this time.

Wellness Coaching

Comment: We recommend that the wellness component of the ABD waiver include the use of certified life coaches under the 100 unit a year at \$50 per unit rate.

BDS Response: Wellness Coaching is defined as a service to plan, direct, coach and mentor individuals with disabilities in community based, inclusive exercise activities based on a licensed recreational therapist or certified personal trainer's recommendation. In order for certified life coaches to be providers of this service, they would need to meet the provider qualification requirements and be providing a service related to the definition in the Waiver.

Operationalization of the Waiver

Comment: Is there a definition of temporary related to provision of services in acute settings?

BDS Response: In response to CMS's request for additional information on the DD Waiver application, the following limit has been added to HCBS available in acute settings to include the following edits to the ABD Waiver: "The provision of HCBS in acute care settings will be reviewed and approved by the person-centered planning team on a quarterly basis. The provision of HCBS in an acute care setting shall not exceed six months. If medically necessary, an extension of the six month timeline may be extended." This may be revised based on additional feedback from CMS.

Comment: It is our recommendation that the eligibility tier be reduced to one eligibility. If eligible they are eligible for both case management and the waiver. We would recommend following the same process as the Developmental Disability Waiver. Level of care would still be determined by the PA process and functional screen. There are two tiers of eligibility. One includes for eligibility for case management only and one for case management and services. We recommend merging and allowing for one tier.

BDS Response: Thank you for your feedback

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Comment: We recommend that the annual Prior Authorization process be extended. In many circumstances the needs and funding of a participant have not changed drastically in the spans of one year. We recommend at a minimum a 2-year PA cycle (aligned with certifications). It would better support operations both for the Area Agencies and the Bureau of Developmental Services.

BDS Response: The annual PA renewal is a Federal requirement. We appreciate your feedback.

Comment: We recommend that startup funding be available 8 weeks prior to the start of services. For many individuals with high support needs and clinical needs a solid transition, training, and handoff from schools or other involved professionals so the onboarding team can ready is best. In addition, for those with behavior plans, they need to be in place prior to the person starting and we need to be able to fund clinical teams for this development prior to the start of services.

BDS Response: Funding for services is only for those services included in the Individualized Service Agreement based on an assessed need and clearly defined as a waiver service. This may include services such as Service Coordination or Specialty Services that are utilized prior to the start of services.

Comment: We support that the waiver indicates in detail when services are expected to be in the Service Agreement, goals, reported on month, etc. It helps to ensure the individual, family, and team know to outline that to support the funding.

BDS Response: Thank you for your feedback

Comment: Throughout the services, the ABD waiver draft indicates that the 1201 is required for medication administration. Then another section is added that for PDMS they are to follow the 404. Recommend that clarification is needed to state the 1201 and 404 is required for PDMS.

BDS Response: He-M 1201 is required to ensure the safe administration of medications by providers to individuals who receive services pursuant to He-M 1001, He-M 507, He-M 518, He-M 521 or He-M 524. Medication administration pursuant to He-M 525 must comply with He-M 1201 or NUR 404 as applicable.

Comment: On page 108, it describes a legally responsible adult can provide services to an individual. One of the criteria is that they must demonstrate more need than others with acquired brain disorders. We recommend this be removed as we do not have a tool that is specific to measuring need related to their ABD. This would be subjective without a tool. In addition, this section says the service coordinator “shall conduct monthly and quarterly visits” in accordance with He-M 522. We are not required to visit monthly and recommend that be removed. We also recommend for PDMS clarity on how often visits are required as we do not currently require quarterly visits in 522 for ABD participants unless in a 521 program.

BDS Response: Thank you for your feedback regarding the criteria to pay a legally responsible adult. CMS requires that the state include policies to specify when payment will be made to a legally responsible person for *extraordinary care*. The waiver has been updated to the following to align with the requirements in He-M 522.11 “the service coordinator shall conduct monthly *monitoring* and quarterly visits in accordance with NH Administrative rule He-M 522.

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Comment: There are a number of services where relative or legal guardian is checked off as being able to provide the service but not a legally appointed representative. We recommend that legally appointed representative be checked off. Delegation of responsibilities assists participants and at times they may need to provide services.

BDS Response: The term “legally appointed representative” is not an option for a service provider. The term utilized is “legally responsible person,” which refers to a parent of a minor child or the spouse of a waiver participant. The State has allowed for a legally responsible person to provide certain residential habilitation services.

Comment: It is our recommendation that reference checks be optional. The Federal and State DOL do not require reference checks. PDMS is about hiring people you know to provide services in a relationship model. In our experience, a good majority of families have a prior relationship with personal care workers. In addition, most businesses will only confirm dates of hire and will not give feedback on their performance. The other references are friends and most always give a positive review. Families should have the option, though it should not be required. It also adds a delay in the hire process. Vendors are delayed by this criterion as well when hiring. This draft recommends 2 references one of which must be from an employer. We believe that could create additional barriers to hiring.

BDS Response: BDS will share this feedback with the Statewide PDMS Committee and recommend that this committee consider these recommendation. If adopted, rule revisions would be required as reference checks are outlined in He-M 525.06 (k)(3)(f).

Comment: We recommend that the consultation in the ABD waiver should support the use of ABA services as it is not a state plan covered service for those over the age of 21.

BDS Response: If the ABA services are required based on an assessed need of the individual, meet the definition of the Waiver Service and Provider Qualifications in the Waiver and are not otherwise covered by state plan, the service may be covered by the Waiver.

Comment: We recommend that there be an Orientation, Remediation, Transition component of the waiver to support and manage families in their self-direction roles for PDMS programs. Success of self-direction comes from understanding the responsibilities to self-direction and having tools to support and simplify processes. We believe this is done with a successful Orientation program. If a family gets off track in their responsibilities (reporting compliance, contact, budget lapse) we believe a formal structure to identify the challenge, brainstorm a plan to correct, and review to ensure the plan worked in a set time is necessary (remediation plan). After 3 attempts at remediation for the same area, a transition to a traditional model of service should be permitted. We support the development of a statewide PDMS committee to work on this implementation as noted in the ABD waiver draft.

BDS Response: Thank you for your feedback.

Comment: We believe that satisfaction should be reported by the family in PDMS programs. The current regulation/ waivers states that service coordinator will document satisfaction levels. True self direction asks the family to hold that responsibility. We have asked our families to document that

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monthly on their progress notes with success and recommend the waiver be clarified that the family needs to report satisfaction. As self-direction defines, the family should be the lead to communicate when they are satisfied or not. The service coordinator is on for reviewing satisfaction responses and responding when satisfaction is not met. This supports keeping families in the driver's seat.

BDS Response: BDS will share this feedback with the Statewide PDMS Committee and recommend that this committee consider these recommendation for the future policy manual for NH PDMS as future rule revisions.

Comment: We recommend that an assessment tool be completed for everyone asking to enter ABD waiver for PDMS models for their ability and skills in self-direction. The self-assessment will allow for families to determine if they want to take on that role based on the assessment results. It will also help us to develop a Family/ individual support plan for training and supporting families/individuals in self-direction. This makes is easy to offer Family Facilitation Services to support a family in the first few months of onboarding and ongoing if they identify they need it. Gateways Community Services is willing to share some national examples of this as best practice. We support the statewide stakeholder group defining and implementing as noted in the draft.

BDS Response: Thank you for your feedback.

Comment: We recommend that the training requirements outlined in the ABD waiver be reviewed. The training criteria outlined would result in months of training prior to working with the individual delaying the process for workforce. The additional components that a worker who has not worked with the disability type is required to be supervised for the first 16 hours of work and then monitored monthly in each of the environments they provide care is not a realistic or valuable requirement. The waiver requires training specific to the individual. We support that. We recommend that the ABD waiver specifically define when the 506 is to be followed or when the PDMS rules are to be followed. They are contradictory. This current draft states "He-M 506 provides qualifications and training provided for all providers. State rule He-M 521 and He-M 525 contains requirements for service provision when the individual chooses the PDMS model". It is unclear if they must follow both the 506 and the He-M 521 and 525 or if He-M 521 and 525 trump the 506. Recommend being very clear.

BDS Response: BDS will share this feedback with the Statewide PDMS Committee and recommend that this committee consider these recommendation for the future policy manual for NH PDMS as future rule revisions.

Comment: We recommend that funding utilization outlined in the ABD waiver support adjusting funding allocations to the families/individual' s utilization be permitted in PDMS. As the Area Agency we are required and monitored on our efforts and outcomes of managing lapse in funding. The current waiver outlines that after 2 years of underspending we can approach the family about adjusting the budget to utilization. We are working with families monthly to manage their budgets and develop spending plans anytime they are off track with spending. If an individual's needs are being met, we should be able to adjust with the commitment that any adjustment will not decrease any of the services that they have been receiving. We also recommend that for chronic underspending the ORT Plan be implemented as the strategy to support the family to spend in line with their plan and/or potentially

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transition to more traditional services if spending can't meet demands. We recommend adjustments can be made after one-year history of underspending with the ORT Plan in place.

BDS Response: BDS will share this feedback with the Statewide PDMS Committee and recommend that this committee consider these recommendation for the future policy manual for NH PDMS as future rule revisions.

Comment: We currently require a life safety check by the fire department, background checks, etc. We are also asking for clarity on spouse in the PC&H also outlining domestic partnerships, common law marriages, and civil unions.

BDS Response: Thank you for your feedback. BDS will investigate this question further.

Comment: Recreation Therapy is a very important thing, and I would not want to see that be eliminated. Glad to see that they are staying in there, but just moved to another spot. Thank you for explaining it is gone, but not forgotten.

BDS Response: There are many benefits therapeutic recreation, but we must change how we capture those benefits. Rather than defining the service as "recreation" we want to ensure the clinical need is being highlighted as a part of the definition. If we think of what recreation does for people, it helps for them to be included in their communities. We did our best to refine the definition of Community Integration Services which focuses on the clinical need still captures the valued outcomes of therapeutic recreation and recreation services that were in the previous waiver through community integration.